

PETITIONER:
M..C. CHACKO

Vs.

RESPONDENT:
STATE BANK OF TRAVANCORE, TRIVANDRUM

DATE OF JUDGMENT:
23/07/1969

BENCH:
SHAH, J.C. (CJ)
BENCH:
SHAH, J.C. (CJ)
MITTER, G.K.

CITATION:
1970 AIR 500 1970 SCR (1) 658
1969 SCC (2) 343

ACT:

Charge--Guarantee--Father guaranteeing payment of overdraft account of Bank of which son was manager--Deed by father giving his properties to son and family members--Recital in deed that father's liability if any to be satisfied by the son and the properties allotted to him--If sufficient to create charge--Right if can be enforced by person not party to contract.

HEADNOTE:

A bank, of which the appellant was the Manager, had an overdraft -account with another bank which later merged with the respondent. The appellant's father had executed from time to time letters of guarantee holding himself liable for the amount under the overdraft arrangements. The appellant's father executed a deed giving away his properties to the appellant, and other members of the family. The deed recited that he had executed the letters of guarantee at the request of the appellant, and that the amount due to the Bank was to be paid by the appellant; but if any amount had to be, paid by him (father) as per the letter of guarantee, the appellant and the properties allotted to him were to be answerable for that amount. The creditor bank filed a suit against the debtor bank and also against the appellant and his father's other heirs and legal representatives for the amount due under the overdraft arrangement; and claimed that a charge was created on the properties to which the deed executed by the father of the appellant related. The trial court decreed the suit against the debtor bank and also 'against the appellant limited to the property received by him from his father under the deed but held that the claim to enforce the personal liability of the father against his legal representatives was barred by the law of limitation. The High Court confirmed the decree. On the questions (i) whether under the deed a charge was created in favour of the creditor bank to satisfy the debt arising under the letter of guarantee, and (ii) whether the charge, assuming that a charge arose, was enforceable by the creditor bank when, it was not a party to the deed,

HELD: (i) In order that a charge may be created, there must be evidence of intention disclosed by the deed that a

specified property or fund belonging to a person was intended to be made liable to satisfy the deed,

In the present case the recitals in the deed did not evidence any intention of the donor to create a charge in favour of the creditor bank; they merely set out an arrangement between the donor and the members of his family that the liability under the letter of guarantee if and when it arose, will be satisfied by the appellant out of the property allotted to him under the deed. The letter of guarantee created merely a personal obligation and an intention to convert a personal debt into a secured debt in favour of the Bank, a third person, could not be inferred from the recitals in the deed.

Akalla Suryanarayana Rao & Ors. v. Dwarapudi Basivireddi
JUDGMENT:
659

(ii) Even if it be granted that there was an intention to create a charge the creditor-bank, not being a party to the deed could not enforce its covenants. It must be taken as well settled that except in the case of a beneficiary under a trust created by a contract or in the case of a family arrangement to right may be enforced by a person who is not a party to a contract. [662 H]

Krishna Lal Sadhu v. Pramila Bain Dasi, I.L.R. 55 Cal. 1315, referred to.

&
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 652 of 1966.

Appeal by special leave from the judgment and order dated November 23, 1964 of the Kerala High Court in A.S. No. 502 of 1961.

S.V. Gupte, Anantha Krishna Iyer, S. Balakrishnan and R. Thiagarajan, for the appellant.

H.R. Gokhale, J.S. Arora and K. Baldev Mehta, for the respondent.

The Judgment of the Court was delivered by

Shah, Ag. C.J. The High Land Bank Kottayam of which the appellant M.C. Chacko was the Manager, had an overdraft account with the Kottayam Bank. K.C. Chacko, father of the appellant, had executed from time to time letters of guarantee in favour of the Kottayam Bank agreeing to pay the amounts due by the High Land Bank under the overdraft arrangement. By the last letter of guarantee dated 22nd January 1953 K.C. Chacko agreed to hold himself liable for the amounts due by the High Land Bank to the Kottayam Bank on the overdraft arrangement subject to a limit of Rs. 20,000.

The Kottayam Bank Ltd. filed a suit in the court of the Subordinate Judge of Kottayam against the High Land Bank for a decree for the amount due in the account. To this suit were also impleaded K.C. Chacko the guarantor, M.C. Chacko Manager of the High Land Bank, and M.C. Joseph, Kuriakose Annamma and Chinamma, the last three being the son, daughter and wife respectively of K.C. Chacko. Against the High Land Bank the claim was made on the footing of the overdraft account: against K.C. Chacko on the letter of guarantee and against M. C. Chacko, his brother, his sister and his mother as universal donees of the property of K.C. Chacko under a deed dated June 21, 1951 under which, it was claimed, a charge was created on the properties to which the deed related and against M.C. Chacko, also on the claim that he had personally agreed to pay the amount due by the

High Land Bank. During the pendency of the suit, K.C. Chacko died and the suit was prosecuted against his widow, .

660

daughter and sons who were described also as his legal representatives.

The trial court decreed the suit against the High Land Bank and also against M.C. Chacko, limited to the property received by him from his father under the deed dated June 21, 1951. The claim of the Kottayam Bank to enforce the liability under the letter of guarantee personally against K.C. Chacko was held barred by the law of limitation and on that account not enforceable against his heirs and legal representatives. The Court also rejected the claim that M.C. Chacko had personally agreed to pay the amount due under the overdraft arrangement.

In appeal to the High Court by M.C. Chacko the decree C passed by the trial court was confirmed and the cross-objections filed by the State Bank of Travancore with which the Kottayam Bank was merged claiming that M.C. Chacko was personally liable were dismissed. This appeal with special leave is preferred by M.C. Chacko against the decree of the High Court.

Two questions arise in this appeal: (1) whether under Ex. D-1 a charge is created in favour of the Kottayam Bank to satisfy the debt arising under the letter of guarantee and (2) whether the charge assuming that a charge arises-is enforceable by the Bank when it was not a party to the deed Ex.D-1.

Ex.D-1 is called a deed of partition: in truth it is a deed. whereby K.C. Chacko gave the properties described in the Schedule A to M.C. Chacko and other properties described in Schs. B to F to M. C. Chacko: M.C. Joseph, Annamma and Chinamma. In paragraph 17 it is recited:

"I have no debts whatsoever. If in pursuance of the letter given by me to the Kottayam Bank at the request of my eldest son, Chacko, for the purpose of the High Land Bank Ltd., Kottayam, of which he is the Managing Director, any amount is due and payable to the Kottayam Bank, that amount is to be paid from the High Land Bank by my son, Chacko. If the same is not so done and any amount becomes payable (by me) as per my letter, for that my eldest son, Chacko and the properties in Schedule A alone will be answerable for that amount."

The other paragraphs which deal with the properties in Schedule A may also be referred to. Paragraph 10 of the deed recited:

"The donees of the properties included in A, B and C schedules are, as from this date, to be in possession of their respective properties and to get mutation of

661

registry in their names, pay land revenue and enjoy the income save that from cocoanut trees."

By paragraph 12 it was declared that notwithstanding the deed of partition, K.C. Chacko will take the income from the cocoanut trees standing on the properties included in Schedules A, B, C and F till his death and that the donees of the properties will take and enjoy the income from the cocoanut trees in their respective properties after his death. In paragraph 13 it was recited that:

"As it is decided that Chinamma.....

should receive and have for her maintenance the rent of the building in item 7 in the A schedule, as well as the rent of the building in item 18 of the B schedule, she is to be in possession of these buildings as from this date and is to let them out and enjoy the rent. The respective donees will have possession and enjoyment after her death. Chinnamma is to have full rights and liberty to reside in any of the houses included in A, B or C schedule and so long as she so resides in any of the houses, the donees of the respective houses is to meet all her expenses. The rent collected by Chinnamma from the buildings given possession of to her is to be utilised by her for her private expenses as she pleases."

In our judgment the various covenants in the deed. were intended to incorporate an arrangement binding between the members of the family for satisfaction of the debt, if any, arising under the letter of guarantee.

We are unable to agree with the High Court that by cl. 17 of the deed it was intended to create a charge in favour of the Kottayam Bank for the amount which may fall due under the letter of guarantee. The letter of guarantee created merely a personal obligation. The deed Ex. D-1 was executed before the last letter of guarantee dated January 22, 1953. By cl. 17 of Ex. D-1 it is merely directed that the liability if any arising under the letter of guarantee, shall be satisfied by M.C. Chacko and not by the donor, his son M. C. Joseph, his daughter Annamma and his wife Chinnamma. The reason for the provision in the deed is clear. M.C. Chacko was the Managing Director of the High Land Bank Ltd. and it was at the instance of M. C. Chacko that the letters of guarantee were executed by the donor. For creating a charge on immovable property no particular form of words is needed: by adequate words-intention may be expressed to make property or a fund belonging to a person charged for payment of a debt mentioned in the deed. But in order that a charge may be created, there must be evidence of intention disclosed by the deed that a specified property or fund belonging to

662

a person was intended to be made liable to satisfy the debt due by him. The recitals in cl. 17 of the deed do not evidence any intention of the donor to create a charge in favour of the Kottayam Bank: they merely set out an arrangement between the donor and the members of his family that the liability under the letter of guarantee, if and when it arises, will be satisfied by M.C. Chacko out of the property allotted to him under the deed.

The debt which M.C. Chacko was directed by the deed to satisfy was not in any sense a "family debt". It was a debt of K.C. Chacko; and K.C. Chacko was personally liable to pay that debt. After his death his sons, his daughter and his widow would be liable to satisfy the debt out of his estate in their hands. From the recitals in the deed Ext. D-1 an intention to convert a personal debt into a secured debt in favour of the Bank, a third person, cannot be inferred. In *Akalla Suryanarayana Rao & Others v. Dwarapudi Basivireddi & Others*(1) the Madras High Court in construing a deed of partition of joint family property pursuant to a compromise decree, held that properties allotted to certain branches to which were also "allotted certain debts" with a stipulation that until the debts were fully discharged the

properties allotted to the shares of the respective persons shall be liable in the first instance, were not subject to a charge in favour of the creditors. The Court held that the covenant in the partition deed resulted in a contract of indemnity, and not a charge. In the present case also the covenant that M.C. Chacko will either personally or out of the properties given to him satisfy the debt is intended to confer a right of indemnity upon other members of the family, if the Kottayam Bank enforced the liability against them. and created no charge in favour of the Bank. Clauses 12 'and 13 of the deed support that view. By el. 12 the right to the coconut trees standing in the properties included in Schs. A, B, C and F is reserved to K.C. Chacko. Similarly Chinnamma, wife of K.C. Chacko, is permitted during her lifetime to occupy the houses in the properties described in the three schedules and to recover the income and to utilise the same for herself. It is clear that K.C. Chacko had no intention to create a charge or to encumber any of the properties for the debt which may become due to the Bank.

The Kottayam Bank not being a party to the deal was not bound by the covenants in the deed, nor could it enforce the covenants. It is settled law that a person not a party to a contract cannot subject to certain well recognised exceptions, enforce the terms of the contract: the recognised exceptions are that beneficiaries under the terms of the contract or where the contract is a part of the family arrangement may enforce the covenant. In (1) I.L.R. 55 Med. 436.

663

Krishna Lal Sadhu v. Primila Bala Dasi(1) Rankin, C.J observed:

"Clause (d) of section 2 of the Contract Act widens the definition of 'consideration' so as to enable a party to a contract to enforce the same in India in certain cases in which the English Law would regard the party as the recipient of a purely voluntary promise and would refuse to him a right of action on the ground of nudum pactum. Not only, however, is there nothing in s. 2 to encourage the idea that contracts can be enforced by a person who is not a party to the contract, but this notion is rightly excluded by the definition of 'promisor' and 'promisee'."

Under the English Common Law only a person who is a party to a contract can sue on it and that the law knows nothing of a right gained by a third party arising out of a contract: Dunlop Pneumatic Tyre Co. v. Selfridge & Co. (2). It has however been recognised that where a trust is created by a contract, a beneficiary "may enforce the rights which the trust so created has given him. The basis of that rule is that though he is not a party to the contract his rights are equitable and not contractual. The Judicial Committee applied that rule to an Indian case Khwaja Muhammad Khan v. Husaini Begam(3). In a later case Jaman Das v. Ram Autar(4) the Judicial Committee pointed out that the purchaser's contract to pay off a mortgage debt could not be enforced by the mortgagee who was not a party to the contract. It must therefore be taken as well settled that except in the case of a beneficiary under a trust created by a contract or in the case of a family arrangement, no right may be enforced by a person who is not a party to the contract.

Even if it be granted that there was an intention to

create a charge, the Kottayam Bank not being a party to the deed could enforce the charge only if it was a beneficiary under the terms of the contract, and it is not claimed that the Bank was a beneficiary under the deed Ex. D-1. The suit against M.C. Chacko must therefore be dismissed.

The decree passed by the High Court is modified and it is declared that M.C. Chacko is not personally liable for the debt due under the letter of guarantee executed by K.C. Chacko, nor are the properties in schedule A allotted to M.C. Chacko under the deed dated June 21, 1951 liable to satisfy the debt due to the Kottayam Bank under the letter of guarantee.

(1) I.L.R. 55 Cal. 1315. (2) [1915] A.C. 847.

(3) (1910) 37 I.A. 152. (4) [1911] 39 I.A. 7.

14 Sup CI/69--13

664

Having regard to the circumstances of the case and specially that a concession that persons not parties to a contract may enforce the benefit reserved to them under the contract was made before the High Court, we direct that the parties to this appeal will bear their respective costs throughout.

Y.P'

Decree modified.

665